

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 20676 of 1999

Between:

Kanaka Durga Oil Mill, Vaddepally village,
Hathnoora mandal, Medak dist., rep. by its
Managing Partner Dandu Hanumantha Rao

..... PETITIONER

AND

1)The Chief Engineer, Electricity, Hyderabad zone,
A.P.Transmission Corporation Ltd., at Hyderabad

2)The Superintending Engineer-Assessments, A.P.TRANSCO,
Hyderabad.

3)The Asst. Divisional Engineer, DPE-II, AP TRANSCO,
Sanga Reddy, Medak dist.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or writs, order or direction declaring and setting aside the impugned proceedings dated 27.04.1999 in order No.SEA/HYD/P.MDK-321/SAH-7224 on the file of the second respondent and the proceedings of the first respondent as communicated in his Lr. No. CEE/HZ/SMRT/F:A22 of 98/D No.1675/99, as illegal, arbitrary, violative of principles of natural justice and violative of terms and conditions of supply.

Counsel for the Petitioner: MR.K.RAGHUVeer REDDY

Counsel for the Respondents : SMT.M.VINOBA DEVI

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 20676 of 1999

ORDER :

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Heard both sides.

The petitioner herein, which is a trading rice mill, seeks to assail the impugned action on the part of the respondents herein in assessing the amount on a quite higher side in regard to certain allegations found against it.

The case of the petitioner is that the present proceedings have been initiated in the light of the inspection made on 15.02.1996, *inter alia*, on the allegations that there is no seal to meter box and to the meter terminal cover and the meter cover seals were having extra impressions; apart from 2 Nos. meter cover seal bits one from the left top and other from the right bottom were coming out freely; seal wire and other two seal bits were damaged and tampered and thus, the consumer was having accessibility to the internal mechanism of the meter, which necessarily amounts to pilferage of energy. After following the procedure and providing opportunity, initially provisional assessment was made at Rs. 4,14,046/- together with Rs.150/- being supervision charges. On appeal, the said amount was reduced after taking into various factors into consideration, and the same was

arrived at Rs. 2,35,628.50 ps.. Hence, this Writ Petition.

The learned counsel appearing for the petitioner contends that even by taking into account the billing for back period, the authorities have taken the same on a quite higher side. He further contends that for the earlier 5 years, the units consumed are 4384, 2594, 3621, 7988 and 8119, and therefore, it can not be said that the units as now fixed in the final order of assessment by the appellate authority can be said to be on a proper appreciation.

The learned standing counsel appearing on behalf of the respondents submits that having regard to various facts and circumstances, the authorities have taken a lenient view and reduced the amount substantially, and therefore, there is no illegality in the proceedings.

Considering the submissions made and on perusal of the material, the only question remains to be considered is as to whether on the facts and circumstances, the authorities were right in fixing the assessed amount at Rs. 2,35,628.50 ps..

There is no dispute to the aforesaid facts of conducting inspection on 15.02.1996, finding of irregularity and also with regard to the procedure followed. Even the report of the inspecting authority goes against the petitioner. On consideration thereof, both the authorities held that the petitioner was responsible for such pilferage.

Now, coming to the quantum of amount assessed, no doubt, the primary authority has sought to proceed on a quite higher side and therefore, the appellate authority by approaching on average basis, took into account the aforesaid figures as shown in the order. No doubt, the petitioner's rice mill is situated in a village and is not a non-

trading mill to store rice after milling. However, it is very difficult to make any assessment in regard to such back billing especially in the absence of any positive material coming forth on either side. The figures can always be stated either way. Therefore, it can not be said that the assessment made is based on any correct and true facts. However, any re-exercise in a Writ Petition under Article 226 of the Constitution of India, would virtually go into the factual arena, and is not permissible. However, by taking into account the fact that the inspection was made on 15.02.1996 and the petitioner's rice mill is situated in a remote area of the district, there could not have been such consumption as such, and even the readings as shown above vary quite substantially. Therefore, giving benefit of reducing the assessed amount by 30% would meet the ends of justice.

The Writ Petition is, accordingly, partly allowed reducing the assessed amount by 30%, i.e. Rs. 2,35,628-50 ps. Less Rs. 70,689/- (30% of it) = Rs. 1,64,939-50 ps. It is needless to mention that any amount already paid by the petitioner shall be given credit to the amount arrived at now. No costs.

(B.Prakash Rao, J.)

23.12.2004

DRK

Copy to:

1)The Chief Engineer, Electricity, Hyderabad zone,
A.P.Transmission Corporation Ltd., at Hyderabad

2)The Superintending Engineer-Assessments, A.P.TRANSCO,
Hyderabad.

3)The Asst. Divisional Engineer, DPE-II, AP TRANSCO,
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4) Two CD copies.